



Town of Stow PLANNING BOARD

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August 11, 2010

Senator James B. Eldridge
State House Room 213-A
Boston, MA 02133

Representative Kate Hogan
State House Room 33
Boston, MA 02133

RE: Comprehensive Land Use Reform and Partnership Act – Senate Bill 2482

Dear Senator Eldridge and Representative Hogan:

We are writing to voice concern about the Comprehensive Land Use Reform and Partnership Act. We understand this bill proposes changes to Chapter 40A (The Zoning Act), Chapter 41, Section 81D (Master Plan) and Chapter 41, Sections 3-18 (Subdivision Control Law) and creates a new Chapter 40U (Land Use Partnership Act). It is also our understanding that this bill is a compromise draft based on the Land Use Partnership Act (LUPA) and the Community Planning Act 2 (CPA2).

After careful review of the proposed Bill, we find that this Bill is a substantial improvement to LUPA and CPA2. However, the Planning Board still has grave concerns about the proposed changes relative to Master Plans and the proposed new Chapter 40U Land Use Partnership Act. The Land Use Partnership Act creates two sets of legislature (Opt-in Communities and Opt-out Communities) and forces development whether or not a market demand exists. Furthermore, Stow is a community with private water and septic; this lack of infrastructure and the cost of installing such, could prevent the Town of Stow from becoming an Opt-in Community. The proposed new Section 40A, Section 3 (Consistency with Master Plan), states that no zoning ordinance or by-law may be inconsistent with a plan adopted in compliance with Section 81D of Chapter 41. The Master Plan should be a forward-looking document whereas Zoning Bylaws are a current document; if both are completely aligned, the Master Plan would no longer function as the goals for the town, rather the status quo.

General Comments:

Chapter 40A:3 Consistency with Master Plan

Section A. Requirement

As indicated above, the Master Plan should be a forward-looking document as opposed to the Zoning Bylaw being a current document. Therefore, it is unreasonable for both documents to be consistent.

Section B. Rebuttable

This section puts local zoning at risk to be challenged. Zoning Bylaws are adopted by a vote of Town Meeting, residents of the community, after being carefully considered and vetted at a Public Hearing and at Town Meeting. These bylaws should be specific to the communities' preference, as voiced by the vote of Town Meeting, and not be put at risk for challenge.

Section C. Alternate Plan

This section includes a provision for communities without a plan to adopt the existing regional plan and use it to meet the requirements of this section. Although a regional plan could be a guide to communities, it is difficult for communities to adopt a generic plan. A one-size-fits all approach is not feasible, as it would be impossible for small communities, such as Stow, with no infrastructure to fit into a generic regional plan.

Chapter 40A:5 Exemptions from Zoning, Limitations on Local Authority

Section A. Building Code

This section should make reference to Stretch Code. As written this section states zoning shall not regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, and provides for the regulation of exterior materials under form-based codes or zones specific to historic or architectural significance.

Chapter 40A:6 Nonconformities and Vested Rights

Section B .1.a.(ii)

The Planning Board feels that the 8-year vesting right is too long.

Chapter 40A:9 Permits and Approvals, Procedures, and Zoning Tools

Section A.2.d

This section allows a petitioner to start construction at his/her own risk, while a decision is under appeal. This could potentially put the Town at risk of being left with an incomplete construction site- leading to further appeals by the Town to ensure the site is cleaned up.

Chapter 40A:9 Permits and Approvals, Procedures, and Zoning Tools

Section B.1.d (Site Plan Review)

The Planning Board feels that a public hearing should be required. This section requires that a Site Plan Review Decision be made within 95 days from the filing of a complete application. Clarification should be made as to what constitutes a 'complete' application. It is recommended that the timeline for a decision be based on the close of the Public Hearing.

Chapter 40A:9 Permits and Approvals, Procedures, and Zoning Tools

Section B.3.d (Site Plan Review – Conditions Safeguards and Limitations)

This section could deter communities from allowing cluster developments by-right, as it does not allow the Site Plan Approval Authority discretion on determining appropriate locations for Open Space.

Chapter 40A:9 Permits and Approvals, Procedures, and Zoning Tools

Section C.1 (Variances - Authority)

This Section allows the permit granting authority to have the discretionary authority to grant a variance in instances where literal enforcement of the provision of the Bylaw would cause substantial hardship to the petitioner. "Substantial hardship" should be defined.

Chapter 40A:9 Permits and Approvals, Procedures, and Zoning Tools

Section C.2 (Variances - Standards)

This section states that the permit granting authority may take into consideration the extent to which the claimed hardship is self-created. "Self-created hardship" should be more clearly defined.

Chapter 40A:9 Permits and Approvals, Procedures, and Zoning Tools
Section C.2.a through d (Variances - Standards)

This outlines standards for making a determination on a variance request. The proposed standards are more lenient. It does not include language for the permit granting authority to consider circumstances relating to soil conditions, shape or topography.

Chapter 40A:9 Permits and Approvals, Procedures, and Zoning Tools
Section C.3. (Use Variances)

Language in the first sentence should be clarified as follows:

Use variances are not ~~included within the scope of this section~~ allowed unless expressly so authorized by an ordinance or by-law.

Chapter 40A:9 Permits and Approvals, Procedures, and Zoning Tools
Section E. (Inclusionary Zoning)

The Planning Board supports this section, especially the provision encouraging that affordable units be built on site.

Chapter 40A:9 Permits and Approvals, Procedures, and Zoning Tools
Section F (Development Impact Fees)

This section should also include the tools available to "opt-in" communities.

Chapter 40A:9 Permits and Approvals, Procedures, and Zoning Tools
Section F.1 (Development Impact Fees)

This section outlines off-site public capital facilities upon which communities may assess impact fees, and does not include areas in which are most costly to communities, such as schools, municipal offices and public safety.

Chapter 40A:9 Permits and Approvals, Procedures, and Zoning Tools
Section F.1.3 (Development Impact Fees - Requirements)

This section requires that the Town complete a study prior to imposition of development impact fees. The requirements for a full study are financially difficult for towns.

Chapter 40A:9 Permits and Approvals, Procedures, and Zoning Tools
Section F.1.4.d (Development Impact Fees - Requirements)

This Section establishes a 10-year timeline for impact fee funds to be expended. This is too short a time period for small communities with limited resources. Also the timeline does not accommodate phased projects.

Chapter 41:81D, Master Plan
Section 1 (Requirement to Plan)

This section requires that a Master Plan be adopted by Town meeting. A master plan is a very large comprehensive plan and very difficult, if not impossible to pass at Town Meeting. A prior Stow Master Plan that was brought forth to Town Meeting failed to get the required vote. Voters instead adopted the Goals, rather than specific details of the Plan.

Chapter 41:81D, Master Plan

Section 2.a (General Description Plan)

This section requires that the master plan shall be internally consistent in its policies, forecasts and standards and shall support and provide coherent rational for the municipality's zoning ordinance or by-laws, subdivision regulations and other laws, regulations, policies and capital expenditures.

As noted above, a master plan is a forward looking document, while bylaws and regulations are existing documents, therefore it is impossible for them all to be consistent at any one time. This requirement puts communities' at risk of by-laws being challenged.

Chapter 41:81D, Master Plan

Section 4 (Optional Subjects)

This section lists 6 optional subjects for a Master Plan, some of which are required in order for a Community to adopt a development impact fee ordinance or by-law and for a community to "opt-in" under the Land use Partnership Act. Many of these requirements are unreasonable to accomplish for small communities with limited resources, such as Stow.

Chapter 41:81P, Minor Subdivisions

Section 4 (Optional Subjects)

The Planning Boards support this proposal, which replaces the old ANR section, providing for a more detailed review of proposed new lots on existing streets.

Chapter 41:81Q,

Section 11 (Subdivision Rules consistent with Master Plan)

As indicated above, the Master Plan should be a forward-looking document as opposed to the Subdivision Rules being a current document. Therefore, it is unreasonable for both documents to be consistent at any one time.

Chapter 40U Land Use Partnership Act

The Planning Board does not support this proposal, which creates two sets of legislature (Opt-in Communities and Opt-out Communities) and forces development whether or not a market demand exists. Furthermore, Stow is a community with private water and septic; this lack of infrastructure and the cost of installing such, could prevent the Town of Stow from becoming an Opt-in Community. This proposal is unfair to small communities such as Stow with limited resources, as we would be penalized by not being eligible for additional powers that opt-in communities may enjoy.

- Priority infrastructure funding – Partnership communities would receive priority in the awarding of discretionary funds for local infrastructure improvements and other state programs.
- Rate of Development - The power to regulate the rate of development
- Natural Resource Protection Zoning - The power to protect natural resources by limiting development densities in areas designated by the state or municipality as having important natural or cultural resource values.
- Vested Rights – The vesting period for a definitive subdivision plan would be reduced from eight years to four years.
- Development Agreements – The power to enter into development agreements that function as a bona fide local land use regulation.
- Development Impact Fees – Development impact fees authorized under Section 9F of the Chapter 40A could be used to defray the costs of public elementary and secondary schools, libraries, municipal offices, affordable housing, and public safety facilities.

Chapter 40U Land Use Partnership Act**Section 5.B (Minimum Standards for Consistency with Commonwealths Land Use Objectives)**

This section proposes a growth target, which is unrealistic as it does not consider whether a market exists. Even in economic booms, the Town of Stow has never had a development that was able to build at a rate that was proposed by the developer.

Chapter 40U Land Use Partnership Act**Section 6.C (Preparation, Adoption, Review and Certification of Implementing Regulations)**

The adoption and certification process is awkward. The process requires the creation of implementing regulations, approved by the regional planning agency. Creating this document without the benefit of a public hearing will make it difficult to obtain Town Meeting approval of zoning changes included in the document.

Sincerely,

Stow Planning Board

Stephen Quinn
Kathleen Willis
Ernest Dodd
Leonard Golder
Lori Clark

Cc: Town of Stow Board of Selectmen
Metropolitan Area Planning Council
Town of Acton Planning Board and Board of Selectmen
Town of Bolton Planning Board and Board of Selectmen
Town of Boxborough Planning Board and Board of Selectmen
Town of Harvard Planning Board and Board of Selectmen
Town of Hudson Planning Board and Board of Selectmen
Town of Maynard Planning Board and Board of Selectmen